IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8392 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNNA SCRAP TRADERS

Versus

GUJARAT MARITIME BOARD

Appearance:

NANAVATI ASSOCIATES for Petitioners

MR PR NANAVATI for Respondent No. 1

MR AS VAKIL for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/07/2000

ORAL JUDGEMENT

1. Arguments of Shri K.S.Nanavaty, Ld.counsel for petitioners have been heard, so also the arguments of

Shri P.R.Nanavaty, Ld.counsel for the respondent No.1. In the midst of arguments, Shri P.R.Nanavaty tendered affidavit-in-reply on behalf of respondent No.1. In the course of arguments, Shri A.S.Vakil, Ld.counsel for respondent No.2 requested for time to file rejoinder to this affidavit-in-reply and to seek instructions of his client as to what transpired in the meeting held between Gujarat Maritime Board--respondent No.1 and the Bankers' Committee of the Gujarat State. However, the decision is not relevant for the purpose of disposal of this writ petition. Morever, this counter affidavit has not been filed by the petitioners, hence, request for time to respondent No.2 to file affidavit in rejoinder can not be appreciated. Request of Shri Vakil, at this stage, is therefore refused.

2. Affidavits having been exchanged by the parties with the consent of learned counsel for the parties, this petition is being finally disposed of at the admission stage.

3. Now it is proposed to dispose of this writ petition on merits.

4. Prayer in this writ petition is for directing the respondent No.1 to execute the agreement as per clause (q) of Schedule-III of the Gujarat Maritime Board Regulation in favour of the petitioners with further direction to the respondent No.1 to grant beaching permission for ship breaking activities to the petitioners at Plot No.107, Alang Ship breaking Yard, Sosia, Bhavnagar.

5. The brief facts are that the petitioner No.1 is a proprietoryship firm carrying on the business of ship breaking activities. The petitioner No.2 is proprietor of petitioner No.1. The respondent No.1 is a statutory body under the Gujarat Maritime Board Act. One M/s Krishna Ship breaking Corporation was granted permission to use the plot No.107, Ship Breaking Yard, Sosiya by the Gujarat Maritime Board-the respondent No.1. There can be no dispute that this plot belongs to Gujarat Maritime Board and not to the petitioners. Petitioner does not claim any proprietory right over this plot except permissive possession from the respondent No.1 for carrying on ship breaking activities after observing certain formalities of filing undertaking and getting agreement executed from the respondent No.1. M/s Krishna Ship breaking Corporation was granted permission to use the aforesaid plot by the respondent No.1. However, vide letter dated 5.7.1998 M/s Krishna Ship breaking

Corporation requested the officers of the respondent No.1 to grant permission to the petitioners for the purpose of utilising the ship breaking plot aforesaid and also to change the name, status and constitution of allottees. Vide letter dated 14.7.98 the respondent No.1 demanded a sum of Rs.10,87,497/- to be deposited in respect of 100% change in the constitution and status of M/s Krishna Ship breaking Corporation. Only permission was granted to M/s Krishna Ship breaking Corporation for carrying on ship breaking activities. Annexure "A" can be referred on the point. The petitioners had also filed the undertakings, dated 5.7.98 before the respondent No.1 vide annexure"B" collectively. One of the conditions in the said undertaking was that before applying for beaching permission the petitioner shall execute an agreement as per clause (q) of Schedule III of the Gujarat Maritime Board Regulations. Payment was effected by the petitioner to respondent No.1 in installments which was completed on 15.7.1998. The respondent No.1 issued No Objection Certificate on 15.7.1998 regarding change in licence of the said plot No.107 for the purpose of ship breaking activities from M/s Krishna Ship breaking Corporation to the petitioner No.1 vide annexure"C". The petitioner thereafter approached the respondent No.1 for execution of agreement as per clause (q) of Schedule III of Gujarat Maritime Board Regulations, 1994. The respondent No.1 informed the petitioner that an order was passed by this High Court on 31st July, 99 in Spl.C.A.No.6134/98 filed by the respondent No.2 against M/s Krishna Ship breaking Corporation, as a result of which the respondent No.1 was not able to execute the said agreement. The inability of respondent No.1 to execute the agreement is exhibited in annexure "D". It is alleged that prior to the order, dated 31st July, 1999 passed by this court, the respondent No.1 had already issued No Objection Certificate for change in the name and status as well as constitution of M/s Krishna Ship breaking Corporation to M/s Munna Scrap Traders-the petitioner No.1. Possession of the said plot was handed over by M/s Krishna Ship breaking Corporation to the petitioner. It is still for want of permission from the respondent No.1 the petitioner could not carry out ship breaking activities in the plot. Since no action was taken by the respondent No.1 for execution of agreement despite repeated requests of the petitioners, petitioners moved a Civil Application No.7652/99 in Special Civil Application No.6134/98 for modification of the order, dated 31st July, 1998 and for vacating the interim relief with respect to Plot No.107. Subsequently, order was passed by this court on 13.9.1999 and as a consequence of order on Civil Application the said Special Civil

Application did not survive and the writ petition of the respondent No.2 was dismissed as withdrawn with a direction to approach the Debt Recovery Tribunal. However, the interim relief granted earlier was extended till30.10.1999 vide annexure "F". It is under these circumstances that the instant petition has been filed.

6. Respondent No.1 has filed counter affidavit. From the counter affidavit of the respondent No.1 it seems that because of restraint order passed by this court in the writ petition filed by the respondent No.2 that the agreement could not be executed despite the fact that the other formalities required by the petitioner were completed by the petitioner.

7. In the counter affidavit of the respondent No.2 stand has been that the petitioners are not entitled to any relief in this writ petition and that they have to approach the Debt Recovery Tribunal for necessary orders.

8. It seems that the respondent No.2 advanced certain loan to M/s Krishna Ship breaking Corporation which was not paid by the Corporation. Suit could not be filed before the Debt Recovery Tribunal because there was no Presiding Officer at that time. Consequently, writ petition was filed before this Court by the respondent No.2 vide Special Civil Application No.6134/98.

9. The main question for consideration is whether the orders passed by this court in Special Civil Application No.6134/98 and the orders passed by the Debt Recovery Tribunal in OA No.202/98 can operate as restraint order against the respondent No.1 from executing agreement in favour of the petitioners. For this relevant orders have to be taken into consideration. The first order of this court in Special Civil Application No.6134/98 dated 31.7.1998 is to the effect that "in the meanwhile and until further orders there shall be ad-interim relief in terms of prayer 6 (C) and (D). Copy of the said writ petition has annexed to this petition. Para 6 (C) of the writ petition contains a prayer for direction that the respondents within a specific time either to furnish security in such sum as may be specified in the order and/or to produce and place at the disposal of the Tribunal, when required, the said property (described at annexure "A" and "B") or value of the same or such portion thereof, as may be sufficient to satisfy the decree/recovery certificate or to appear and show cause why the said respondents should not furnish the security or direct the conditional attachment of the

whole or any portion of the property as specified in Annexures "A" and "B". Relief "D" of the writ petition was in the nature of interim relief restraining the respondent Nos 4 to 13 from transferring, selling, alienating or dealing with the same in any manner, whatsoever. It is relevant to point out at this stage that in the aforesaid S.C.A. of the respondent No.2 neither the Gujarat Maritime Board was a party nor the petitioners of this writ petition, namely, M/s Munna Scrap Traders, a proprietoryship concern. Consequently, it is difficult to conceive that the said order operates against the respondent No.1 or the petitioners. The other order of this court in the earlier petition of the respondent No.2 is dated 18.9.98 was made to operate till disposal of that writ petition. If the petitioners and the respondent No.1 were not parties in that writ petition, it can hardly be said and accepted that the order operates against petitioners or against the respondent No.1. Shri A.S.Vakil, Ld.counsel for the respondent No.2 has, however, drawn my attention to para (E) of the relief clause in which a prayer was made that the interim orders be forwarded to the Gujarat Maritime Board. It is nothing but a formality of informing the Gujarat Maritime Board of the orders passed by this court. This relief can not be construed as impleading the Gujarat Maritime Board as respondent in the said writ petition. Further, no such relief was prayed that the petitioners be also informed of this order. Shri A.S.Vakil has further drawn my attention to the Civil Application moved by the petitioners in Special C.A.No.6134/98, in which,interalia, there was a prayer that the petitioners be impleaded as respondents in that petition. However, that application of the petitioners was disposed of as not surviving vide this court's order, dated 24.9.99 in CA No.7652/99. In that C.A.it was also prayed for modification of the order passed by this court, but since this application was disposed of as not surviving, no order could be passed in favour of petitioners.

10. The effect of the order, dated 18.9.98 in Spl.C.A.No.6134/98 with reference to para (D) of relief clause would be tantamount to restraining the respondent Nos 4 to 13 of that writ petition from transferring, selling, alienating or dealing with the same, in any manner, whatsoever. This injunction did not operate against the respondent No.1 nor did it operate against M/s Krishna Ship breaking Corporation, inasmuch as, the transaction had already taken place before the order, dated 31st July, 1998 was passed by this court.

Permission was already granted and No Objection Certificate was issued by the respondent No.1 to the petitioners on 15.7.1998. Consequently, whatever was done prior to the order, dated 31.7.98 could not be undone by this order. Moreover, neither M/s Krishna Ship breaking Corporation was intending to transfer any right or interest in the property of Plot No.107 to the petitioners nor was it intending to alienate in any manner rights and interest thereon over the property realising that this property did not belong to M/s Krishna Ship breaking Corporation. On the other hand, it belongs to the respondent No.1 and M/s Krishna Ship breaking Corporation was granted licence on certain terms and conditions. The licence was transferred in the name of the petitioners after getting the requisite amount deposited. Consequently, the petitioners also are the licensee of the property holding permissive possession thereon and therefore having no interest or title in the property could not transfer the property or any interest therein.

11. The policy decision reflected in the counter-affidavit of respondent No.1 in the meeting of respondent No.1 and the Bankers' Committee can not operate retrospectively. Consequently, the Gujarat Maritime Board-the respondent No.1 had no business to approach either the Sales Tax Authorities or the respondent No.2 for issuing No Objection Certificate before executing the agreement. If the requisite fee was paid by the petitioners to the respondent No.1 and permission was granted by the respondent No.1 on 15.7.1998, it was duty bound to execute the agreement as provided in Clause (q) of Schedule III of the Gujarat Maritime Board (Conditions and Procedures) For Granting Permission for Utilising Shipbreaking Plots Regulation, 1994. It, interalia, provides that "before issuance of permission letter, a party shall be required to file an undertaking that it accepts all the above terms and conditions and that it undertakes to carry out all the Regulations/instructions of Gujarat Maritime Board and the Officers of the Board, which may be general or special and may be issued from time to time and further that the party shall not claim any right, title or interest to or in shipbreaking plot and the party is not entitled to any Notice for termination of the permission except as provided for in these Regulations and the Schedules thereto". Thus, it is clear from clause (q) to IIIrd Schedule that no right, title or interest in property has been transferred nor it could be transferred to the petitioners. It is further clear that this is nothing but a licence and it is specifically provided in

clause (q) that 'no notice for termination of the permission, viz licence of the Board is required'.

12. Two undertakings, dated 5.7.98 at annexure"B" collectively on pages 15 to 17 have already been fled before the respondent No.1 by the petitioners. Consequently, whatever was required to be done by the petitioners has been done by them as they have also filed requisite undertakings. Now remains the question of execution of agreement.

13. Shri A.S.Vakil, Ld.counsel for respondent No.2 argues that on the basis of order of interim relief further formalities can not be completed because the transaction is not still completed. For this, he has referred to the order of the Tribunal, dated 29.10.1999. In this order, the Debt Recovery Tribunal has restrained the respondents from transferring, alienating or assigning their rights and interest in any manner whatsoever in the shipbreaking Plot No.107. It is argued by Shri K.S.Nanavaty, Ld.counsel for petitioners and Shri P.R.Nanavaty, Ld.counsel for respondent No.1 that so far petitioners and the respondent No.1 of this petition have not been made parties to the O.A.No.202/98 pending before the Debts Recovery Tribunal. Consequently, primafacie, this order of the Tribunal does not operate against the petitioners or against the respondent No.1. Moreover, this injunction order can not be stretched to the extent that it prevents the respondent No.1 from executing the agreement in terms of clause (q) of Schedule III of Regulations of 1994 in favour of petitioners. No restraint order is in operation against the petitioners or against the respondent No.1 to this petition not to transfer, alienate or assign the rights or interest, in any manner. Admittedly, it is only the respondent No.1 who is the owner of the plot. Assignment in the nature of granting licence has already been done before this order was passed and consequently this injunction order is rendered infructuous against the respondent No.1. The petitioners are not willing to alienate, transfer or assign their interest as licensee in Plot No.107 nor under Regulations of 1994 they can do so. It is only the respondent No.1 who can transfer, assign or alienate the interest in shipbreaking plots of Gujarat Maritime Board. Consequently, the inaction of the respondent No.1 in not executing the agreement in favour of petitioners can not be appreciated. It is also not understood how the State Bank of Saurashtra-the respondent No.2 can proceed to get Plot No.107 owned by the respondent No.1 attached in execution of any likely decree which may be passed by

Debt Recovery Tribunal against M/s Krishna Shipbreaking Corporation. Likewise, it can not be understood how the respondent No.2 can proceed to get the interest of the petitioners as licensee in the Plot No.107 attached in execution of likely decree in which he is neither principal debtor nor surety.

14. For the reasons stated above, the writ petition is allowed. The respondent No.1 is directed to execute the agreement as per clause (q) of Schedule III of Gujarat Maritime Board Regulations, 1994 within a period of 15 days of petitioners' approaching the respondent No.1 for getting the agreement executed, and shall also grant beaching permission thereafter after other formalities for grant of beaching permission are observed by the petitioners.

19.7.2000 (D.C.SRIVASTAVA,J)